



April 2, 2012

To: Interested Tree Service Contractors

SUBJECT: Removal of Hazardous Tree Limbs and / or Trees within City Street Rights-of-Way  
Contract No. TLR13  
Solicitation of Quotes

As part of the regular maintenance of our street and sidewalk system, the City of Concord needs to prune, limb, and / or remove trees that are affecting or have the potential to affect the safety of the traveling public. As such, the Transportation Department is soliciting quotes from ISA Certified Arborists for such work within the rights-of way of public streets for the 2012-2014 fiscal year. Enclosed is a set of Quoting Documents for your information and further details with regards to this work. If interested, please provide us with your signed quote in a sealed envelope by the date specified on the Quoting Form.

Thank you for your consideration and if you have any questions with this quote request, please call me at 704-920-5362, Mr. Lex Patterson at 704-920-5363, or Mr. Phillip Graham at 704-920-5338.

Sincerely,

CITY OF CONCORD

J. K. Wilson, III, P.E.,  
Transportation Director

JKW/Imp

Enclosure

cc: Project File: Contract No. TLR13  
Judy Cox, Executive Secretary  
Sid Talbert, Purchasing



**Removal of Hazardous Tree Limbs and /  
or Trees within  
City Street Rights-of-Way**

**Contract No. TLR13**

**TRANSPORTATION DEPARTMENT**

**P.O. Box 308 - 850 Warren C. Coleman Blvd.  
Concord, North Carolina 28026-0308  
(704) 920-5300**



## TRANSPORTATION DEPARTMENT

### EXHIBIT "A" GENERAL CONDITIONS AND QUOTE FORM

#### Solicitations of Quotes for the Removal of Hazardous Tree Limbs and / or Trees within City Street Rights-of-Way Contract No. TLR13

The City of Concord is requesting quotes for the pruning, limbing, or removal of specified, hazardous tree limbs and / or trees within the rights-of way of public streets in the City of Concord, North Carolina under its jurisdictional maintenance responsibility as further described below. If you wish to place a quote on this work, please fill out the quoting sheet that is attached and return the quote at the address listed below.

#### 1) Definitions:

City – the City of Concord, North Carolina.

Contract – the executed agreement between the City of Concord and the successful Quoter, covering the performance of the work and the compensation therefore. The term contract is all inclusive with reference to all written agreements affecting a contractual relationship and all documents referred to therein, and shall specifically include, but not be limited to, the quote form, the printed contract form and all attachments thereto, the contract bonds, insurance forms, the plans, the Standard Specifications and all supplemental specifications thereto, the general conditions, and all executed supplemental agreements, all of which constitute one instrument.

Contractor – the Contractor named in the contract documents.

Director – City of Concord Transportation Director or his designated representative(s).

ISA Certified Arborist – a person who can verify having passed the Arborist Certification examination by the International Society of Arboriculture.

MUTCD – Manual on Uniform Traffic Control Devices, Latest Edition together with all addenda thereto.

NCDOT – North Carolina Department of Transportation.

Proposal requirements – the legal and procedural documents, any general and special provisions, together with modifications thereof, and Standard Specifications requirements, with all addenda thereto.

Quoter - An individual, partnership, firm, corporation, or joint venture submitting a quote for the work contemplated.

Standard Drawings - North Carolina Department of Transportation Raleigh, "Highway Design Branch Roadway Standard Drawings" Latest Ed.

Standard Specifications – North Carolina Department of Transportation Raleigh, "Standard Specifications for Roads and Structures", Latest Ed.

Subcontractor – any person, firm, partnership, corporation, with a direct contract with the Contractor who acts for or in behalf of the Contractor in executing any part of the contract, but does not include one who merely furnishes materials.

Transportation Department – City of Concord Transportation Department.

Work – the entire completed service or the various, separately identifiable parts, labor, material or requirement thereof needed to perform such under the contract documents to the satisfaction of the City.

- 2) Project Information: The work under Contract No. TLR13 consists of the selected Contractor pruning, limbing, or removal of specified, hazardous limbs and / or trees during non-emergency and emergency situations including mobilization(s), set-ups and take-downs, all labor including special subcontracting, equipment, vehicles, materials, miscellaneous hardware, tools, consumables, fuel, other incidentals, traffic control and safety operations, cleanup, grinding and disposal(s) to an approved site, seeding and mulching (if needed), touch-up repairs, handwork, administrative cost, insurance, and overhead, and all else required to complete the work to the satisfaction of the Director and the City. All work and materials shall meet and be in accordance with the provisions of the Occupational Safety and Health Administration, the North Carolina Department of Labor, the North Carolina Department of Transportation Standard Specifications for Roads and Structures, Latest Edition, the Manual on Uniform Traffic Control Devices, Latest Edition and all other applicable Federal State and Local laws and regulations. At the option of the City and upon written agreement with the Contractor, this contract may be renewed for an additional one (1) year.

All Quoters shall have in their possession or available to them by formal agreement at the time of quoting - trucks, aerial devices, chippers, stump grinders, hand tools, and any other such equipment that is necessary to perform the work in a satisfactory manner as outlined in these specifications. Any defective work whether the result of poor workmanship, use of defective materials, damage through carelessness or any other cause shall be removed and the work re-executed at no cost to the City.

- 3) Specified Times of the Contract, Working Hours, Schedules, Reports, and Supervision: The Contractor shall pursue the work diligently with workmen in sufficient numbers, abilities, and supervision; and with equipment, materials and methods of construction as may be required to complete the work described in this contract as provided by the Director by the completion date of June 30, 2013. When working on non-emergency, scheduled work, the Contractor will be required to maintain working hours from 9:00 AM to 4:00 PM with a ½ hour unpaid lunch allowance unless otherwise modified by the Director. All work shall be accomplished in a continuous manner once the Contractor begins. Non-emergency mobilizations that are planned and scheduled in the course of work shall be considered incidental to the contract unit prices of all quoted items.

In emergency situations where limbs or trees present an immediate hazard to traffic and as specified by the Director or his representative, the Contractor will provide an immediate response (also see Part 17 below).

Additionally, the Contractor will at no cost to the City notify the Director within forty-eight (48) hours in advance of beginning scheduled work and thereafter coordinate with the Director or his representative regarding the proposed work schedule / locations and obtain approval and request for cooperative efforts by the City and any affected agency (i.e. Cabarrus County Schools).

Work shall only be performed when weather and visibility conditions allow safe operations.

The Contractor shall at all times also be responsible for the supervision, conduct, and discipline of his employees and/or Subcontractors and persons employed by said

Subcontractors. The Contractor shall be an ISA Certified Arborist. All foremen and workmen must have sufficient knowledge, skill, and experience to perform properly the work assigned to them. Any foreman or workman, who in the opinion of the Director, that does not perform his work in a skillful and diligent manner, or who acts in a disorderly or intemperate manner, shall be removed from any portion of the work covered by this contract by the Contractor.

When one or multi-crews are employed, there shall be a designated crew foremen or job superintendent that will represent the Contractor as a single point of contact for the crew(s).

- 4) Specifications and Regulations: All work and materials shall be in accordance with the provisions of the general guidelines of this contract, the Special Provisions and Conditions, the Standard Specifications, Standard Drawings, the latest edition of the MUTCD, Occupational Safety and Health Administration (OSHA), the North Carolina Department of Labor, and all applicable federal, state, and local ordinances and regulations. Contractor and Subcontractor personnel specifically shall comply with the latest revision of ANSI Z133.1 "Pruning Repairing, Maintaining, and Removing Trees, and Cutting Brush – Safety Requirements" and the associated reference sections and regulations and ANSI A 300 pruning guidelines, "Standard for Trees Shrubs and Other Woody Plant Maintenance".

The Contractor and Subcontractor personnel shall be qualified to do tree trimming and removal operations work around energized electrical circuits. Any such work shall be in accordance with the latest revision of Section 7 of the APPA Safety Manual. Strict adherence to the National Electric Safety Code is required with regards to maintaining a safe distance between work personnel and / or apparatus and electric power cables.

All contract personnel shall be clearly identified with the name of the company on their work uniform or apparel. Along with being appropriately clothed and outfitted to perform the work in a safe manner, contract personnel shall maintain a neat and clean appearance. Contract equipment shall be clearly identified with the name of the company.

The Contractor shall keep himself fully informed of, comply with, give all notices, and secure all permits and approvals associated with Federal, State and local laws, regulations, codes and ordinances in any manner affecting the work, and all such orders and decrees as exist, or may be enacted by bodies or tribunal having any jurisdiction or authority over the work, and shall indemnify and hold harmless the City against any claim or liability, including the cost of defense and attorney's fee arising from, or based on, the violation of any such laws, regulations, codes, ordinances, order or decree, whether by himself or his employee.

The Contractor shall utilize complete and proper traffic controls and traffic control devices during all operations. All traffic control and traffic control devices required for any operation shall be functional and in place prior to the commencement of that operation. All traffic control, pedestrian control, safety, and security associated with the entire work shall be in accordance with Part 6 of the Latest Edition of the MUTCD, the Standard Specifications, Standard Drawings, and any other applicable federal, state and local laws and regulations and shall be the responsibility of the Contractor. The Contractor shall conduct the work so as to offer the least possible obstruction and inconvenience to the public and shall have no greater amount of work than can be prosecuted properly with due regards to the rights of the public. Signs for temporary operations shall be removed during periods of inactivity. The Contractor is required to leave the project in a manner

that will be safe to the traveling public. All hazards associated with the work that may pose as a danger and hazard shall be protected outside of working hours.

The Contractor shall maintain existing traffic patterns at all times except in the immediate work zone. Unless otherwise specified or directed by the Director, only one lane of traffic may be closed at any time. Lane closures or road closures shall not be permitted unless deemed appropriate by the Director or his representative. Traffic movements through lane closures on roads with two-way traffic shall be controlled by the Contractor. In situations where sight distance is limited, the Contractor shall provide additional means of controlling traffic, including, but not limited to, flaggers, two-way radios, or pilot vehicles. Flaggers shall be competent personnel, trained in flagging procedures, and furnished with proper, regulatory approved safety devices and equipment, including, but not limited to, approved safety vests and stop/slow paddles. All personnel when working in traffic areas or areas in close proximity to traffic shall wear a regulatory approved safety vest or shirt or jacket which meets color and retroreflectivity requirements. Flaggers and warning signs shall be displayed during all flagging operations and shall be removed when flagging operations are going to cease for a period greater than 30 minutes. During periods of work inactivity, the Contractor shall return the traffic pattern to the existing alignment.

Public traffic shall be permitted to pass through the work-site with as little inconvenience and delay as possible unless a safety issue is involved. Convenient access to driveways, houses, and buildings along the line of work shall be maintained unless a safety issue is involved.

Failure to comply with any of the requirements for safety and traffic control of this contract shall result in suspension of work as provided in the Standard Specifications.

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The Contractor shall not enter upon private property for any purpose without obtaining permission, and shall be responsible for the preservation of all public property and other items, along and adjacent to the street right-of-way. The Contractor shall use every suitable precaution to prevent damage to such items and especially including vehicles, structures, poles, wires, conduits, underground infrastructure, signs, pavement, monuments, and property marks in the vicinity of the work.

If any device, design, material or process covered by letters, patent or copyright is used by the Contractor, he shall provide for such use by legal agreement with the owner of the patent or a duly authorized licensee of such owner, and shall hold harmless the City from any and all loss or expense on account thereof in accordance with the first paragraph of this subsection, including its use by the City.

- 5) Posted Weight Limits: The Contractor's attention is directed to the fact that certain bridges in the City of Concord have posted weight limits. The Contractor will not be allowed to exceed the posted weight limits in transporting materials or equipment to the project. The Contractor should make a thorough examination of all maps and haul routes.
- 6) Utility Locations and Conflict: The Contractor shall be solely responsible for contacting the appropriate utility or agency in the work areas and for the exact locations for all overhead or underground utility or services before starting work. Utility owners shall be contacted a minimum of 48 hours prior to the commencement of operations. It shall be the sole responsibility of the Contractor to verify the location of all utilities and services along and in the work area and to protect such from uninterrupted service. Special care

shall be used in working around or near existing utilities, protecting them when necessary to provide uninterrupted service. In the event that any utility service is interrupted, the Contractor shall notify the utility owner immediately and shall cooperate with the owner, or his/her representative, in the restoration of service in the shortest time possible. The Contractor shall adhere to all applicable regulations and follow accepted safety procedures when working in the vicinity of utilities in order to insure the safety of workers and the public.

Any utility or service that, in the opinion of the Contractor, will have to be made safe or temporarily relocated in order to perform the work shall be coordinated between the Contractor and the applicable utility or service provider. No direct payment will be made for this work, as it will be incidental to the project work and payment at the contract unit price for the various Pay Items in the contract will be full compensation for such action.

- 7) Site Security, Sanitary Provisions, Clean-Up, and Storage: The Contractor shall at all times so conduct the work as to insure the least possible inconvenience to the general public and businesses in the vicinity of the work, and to insure the protection of persons and property in a manner satisfactory to the City. Fire hydrants on or adjacent to the work shall be kept accessible to fire-fighting equipment at all times.

At the end of each workday, the Contractor shall clean the site of any brush, branches, logs, chips, debris or other waste material, which result from the work and secure the work from any hazardous condition unless specifically instructed otherwise by the Director or his representative. The Contractor or his Subcontractor will haul away any and all such debris or waste material to an approved public receiving facility at his expense. All debris and waste material permanently removed are the property of the Contractor. Areas are to be left in a condition equal to that which existed prior to the commencement of arboriculture operations. All lawn areas shall be raked, all street and sidewalk swept. Stump chips and grindings shall be removed from the work area within 48 hours from completion of the actual grinding operation unless instructed to do otherwise by the Director or his representative. All areas that involve any disruption of topsoil shall be graded and prepared for seeding. The Contractor shall exercise every reasonable precaution throughout the life of the project to prevent erosion and siltation. Erosion control measures shall be installed in locations directed by the Director or his representative.

The Contractor's vehicles and equipment shall not be parked within the public right-of-way overnight or at other times when work has been suspended unless approved by the Director, and in no case within 30 feet of the edge of pavement. The Director or his representative may designate specific locations for parking equipment. The Contractor is responsible for off-site location of his trucks, equipment and associated material.

The Contractor shall provide such sanitary accommodations for the use of his employees as may be necessary to comply with the requirements and regulations of the local and State health authorities.

- 8) City Privilege License: The selected Contractor and any Subcontractor(s) will be required to hold a current City of Concord Privilege License. Contact the City of Concord Tax Office at 704-920-5216 for information with regards to this requirement.
- 9) Insurance: The Contractor shall procure and maintain insurance for the contract time by the Contractor, at his own expense, in an amounts and coverage as stated in Sec. 7 of the **CONSTRUCTION CONTRACT FOR Removal of Hazardous Tree Limbs and / or Trees within City Street Rights-of-Way Contract No. TLR13.**

- 10) Indemnity: Refer to **Sec. 13** of the **CONSTRUCTION CONTRACT FOR Removal of Hazardous Tree Limbs and / or Trees within City Street Rights-of-Way Contract No. TLR13.**

- 11) Contract Administration: The general responsibility for the administration of this contract will be done by the Director or his representative. All work, reports, and requests for payment shall be subject to inspection and evaluation by the Director or his representative at any time.

The Director acting directly or through his duly authorized representatives will decide all questions which may arise as to the quality and acceptability of the work performed and as to the rate of progress of the work; all questions which may arise as to the interpretation of the contract; and all questions as to the acceptable fulfillment of the contract on the part of the Contractor. The Director's decision shall be final and shall have executive authority to enforce and make effective such decisions and orders if the Contractor fails to carry out promptly.

The Contractor will be required to obtain written approval from the Director for any subcontract work performed on this project prior to the subcontracted work being performed.

- 12) Method of Measurement: Measurement of the work will be made based on the actual number of pay item units that have been provided, verified, and accepted by the City. Quantities indicated on the Quote Form are estimated and not guaranteed; they are solely for comparing quotes.
- 13) Basis of Payment and Requests for Payment: The quantities of pay items, measured as provided above, will be paid for at the contract unit price provided on the Quote Form. In no case will the total amount paid to the Contractor exceed the total contract quote by more than ten percent without prior approval from the City's Finance Department to the Director. Payment(s) and full compensation by the City will be made on the following:

Each tree trimming crew on a per hour basis utilizing a minimum 55-ft. working height one man aerial lift bucket truck and with an associated chipper / dump truck to accomplish the work in a timely manner satisfactory to the City. Such prices and payments will be full compensation for all the work including but not limited to all mobilizations, set-ups and take-downs, labor including special subcontracting, equipment, vehicles, materials, miscellaneous hardware, tools, consumables, fuel, lubricants, other incidentals including furnishing and replacing ropes and climbing apparatus, winches, blocks, tackle, hoisting, patching, safety operations, cleanup, grinding and disposal(s) to an approved site, seeding and mulching (if needed), touch-up repairs, handwork, administrative cost, insurance, and overhead, and all else required to complete the work to the satisfaction of the Director and the City.

All Traffic control, pedestrian safety and control, and site security operations will be incidental to the work being paid for and will include any and all measures associated with such to completely conform to Part 6 of the latest edition of the Manual of Uniform Traffic Control Devices. All such work shall be the responsibility of the Contractor and will include signs, barricades, materials, labor, all mobilizations, set-ups, and take downs, consumables, tools, etc. to keep the work areas safe.

Additionally, there will be no payment made for any item of the work not specifically listed as a quoted pay item as they are considered incidental to the other pay items. Any

tree or shrubbery damaged beyond repair during the course of work by the Contractor will be removed and replaced by the Contractor at no cost to the City. Replacements will be of a size and type acceptable to the Director.

Payment for services must be requested on forms provided by the City of Concord Finance Department. No other forms will be accepted by the City and processed for payment. Invoices and time sheets shall be in duplicate – one original set to be attached to invoices for City's Finance Department and one copy to be filed with the Transportation Department. Invoices are to be made on shall be submitted by the 25th day of each month, which shall be processed for payment thirty (30) days after receipt.

Note: Any theft of materials or vandalism to the work that occurs during construction, as noted by the Director or his representative, shall be repaired or replaced at the expense of the Contractor at no cost to the City. Contractor will insure the work until such is completed and accepted by the City.

- 14) Oral Agreements and Claims for Additional Compensation or Extension of Time: No oral order, objection, claim or notice by any party to the others shall effect or modify any of the terms of obligations contained in any of the contract documents other than by a definitely agreed upon waiver or modification by both the Contractor and the City in writing.

Any claims for additional compensation and/or extensions of the completion date shall be submitted in writing to the Director with detailed justification within thirty (30) days after receipt of the final invoice payment. The failure of the Contractor to submit the claim(s) within thirty days shall be a waiver of any such claims and a bar to recovery.

- 15) Contract Time, Progress of Work and City's Right to Terminate Contract: This contract shall commence on the effective date given in the Contract Agreement and shall be effective until June 30, 2013. At the option of the City, this contract may be extended for up to an additional one (1) year extension until June 30, 2014. Any requests for extensions to the contract time shall be made in writing and approved by the Director.

Contractor shall pursue the work diligently with workmen in sufficient numbers and abilities, and supervision, and with equipment material and methods to complete the work described in this contract.

The City shall have the right to suspend work or to terminate the contract after giving at least ten (10) days written notice of suspension or termination to the Contractor.

- 16) Subletting of Contract: The Contractor shall not sublet, sell, transfer, assign or otherwise dispose of this contract or any portion thereof, or his right, title or interest therein, without written consent of the City. If approved, subletting of this contract or any portion of the contract shall conform to the provisions of these General Conditions and the Standard Specifications Section 108-6.

- 17) Notices to Proceed (Date of Availability) and Emergency Notices: The Contractor shall be ready to perform contract work operations immediately after the issuance of a City Purchase Order Number / Notice to Proceed.

Under emergency conditions, where limbs or trees present a roadway closure or an imminent hazard to the traveling public, an Emergency Notice will be called in to the Contractor at which time the Contractor shall begin work at the hazard within 24-hrs. A

five hundred dollar (\$500) Emergency Notice fee will be paid to the Contractor for said emergency mobilization made within 12-hrs.

- 18) Litigation Venue: Any controversy or litigation arising out of this contract shall be resolved in the courts of Cabarrus County, North Carolina. Also refer to **Sec. 15** of the **CONSTRUCTION CONTRACT FOR Removal of Hazardous Tree Limbs and / or Trees within City Street Rights-of-Way Contract No. TLR13**. This contract shall be subject to the laws of the State of North Carolina and with respect to this Part 15, time is of the essence.
- 19) Submission and Rejection of Quotes: No Quoter may submit more than one quote. Multiple quotes under different names will not be accepted from one firm or association. A conditional quote will not be accepted. Oral, telephone, facsimile, or telegraph quotes will not be accepted. The Quote form must be filled out and submitted in the bound documents. All quotes will remain subject to acceptance for the number of days set forth in the Quote Form.

**NOTE:** The award of the contract, if it is to be awarded, will be based on an evaluation of the quote amounts given by the Quoter for certain, predetermined Pay-Items selected by the Director. Based on the evaluation of these Pay Items, the responsible Quoter will be notified that his/her quote has been accepted and that he/she has been awarded the contract.

The City of Concord reserves the right to reject any or all quotes.

Quotes are to be submitted to the following address by **May 02, 2012**:

**J. K. Wilson, III, P.E., Transportation Director  
City of Concord  
850 Warren C. Coleman Blvd.  
P.O. Box 308  
Concord, NC 28026-0308**

Please note on envelope:

**Quote Included -  
Removal of Hazardous Tree Limbs and / or Trees  
within City Street Rights-of-Way  
Contract No. TLR13**

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**QUOTE FORM**  
**Removal of Hazardous Tree Limbs and / or Trees**  
**within City Street Rights-of-Way**  
**Contract No. TLR13**

Pay Items	Pay Item Description – All Items Furnished and Performed by Contractor	Quantity	Units	Unit Price	Amount (\$) Quoted
1.1	Labor, Basic Tree and Limb Service Crew				
	Foreman	1	per hour		
	Climber – skill level A	1	per hour		
	Climber – skill level B	1	per hour		
	Climber – skill level C	1	per hour		
	Groundman	1	per hour		
	Labor Cost for Basic Crew *Basic is Minimum 4-man crew including Foreman 40-hr. work week	1	per hour		
	Insurance, Licenses, Taxes, Overhead, and Profits	N/A (Included in Pay Item 1.1)			
1.2	One Man Aerial Lift Bucket – Minimum 55-ft. Working height with Hydraulic Dump Chip Body – includes all associated miscellaneous tools and appurtenances to perform work	1	per hour		
1.3	Chipper, Disc Style Power Feed Minimum 12-in. diameter; material capable	1	per hour		
1.4	Chain Saw 20-in. bar	1	per hour		
1.5	Chain Saw over 14-in. bar	1	per hour		
1.6	Chain Saw 14-in. bar or less	1	per hour		
1.7	Leaf Blower	1	per hour		
1.8	Pick-Up / Crew Service Truck	1	per hour		
<b>PREDETERMINED PAY ITEMS</b>		<b>BY CITY</b>			

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Contractor: \_\_\_\_\_

(Insert exact legal name of corporation, joint venture, business, etc. here)

License Number: \_\_\_\_\_

Mailing/Billing Address: \_\_\_\_\_

Telephone Number: \_\_\_\_\_

Signed by Authorized Agent: \_\_\_\_\_ Date \_\_\_\_\_

Print Name \_\_\_\_\_ Title \_\_\_\_\_

1. This quote shall not add any unauthorized additions, deletions, or conditional quotes.
2. Quoter agrees that any and all excavations are unclassified.
3. This quote will remain subject to acceptance for **60** days after the date of submittal given above and that once accepted and the contract executed between the City and the Contractor that the unit prices shall remain as submitted herewith until **June 30, 2013**.
4. Quoter agrees that the work will be completed and ready for final payment on or before **June 30, 2013**, (unless contract is extended for an additional year by the City).

**Do Not Separate the Quote Form from the Quoting Packet.**



## TRANSPORTATION DEPARTMENT

### EXHIBIT "B"

#### **SPECIAL PROVISIONS AND CONDITIONS** **Removal of Hazardous Tree Limbs and / or Trees** **within City Street Rights-of-Way** **Contract No. TLR13**

##### **SPC-1. – Pre-Quoting Meeting**

A pre-quote meeting for a submittal will not be required.

##### **SPC-2. – General Instructions to Quoters**

- All questions about the meaning or intent of the Quoting Documents and the contract documents shall be submitted to the Director at 704-920-5362. Interpretations or clarifications considered necessary by the Director in response to such questions will be issued by Addenda mailed, Faxed or delivered to all parties recorded by the Transportation Department as having received the Quoting documents. Only answers issued by Addenda will be binding. Oral and other interpretations or clarifications will be without legal effect. Contacts with anyone other than those designated during the selection process will automatically eliminate the company/individual from consideration.
- The Quote Form furnished by the City with the proposal shall be used and shall not be altered in any manner. Do not separate the Quote Form from the Quoting Packet.
- All entries on the Quote Form, including signatures, shall be written in ink.
- The Quoter shall submit a unit price for every item on the Quote Form.
- An amount quoted shall be entered on the Quote Form for every item. The amount quoted for each item shall be determined by multiplying each unit quoted by the quantity for that item.
- The total amount Quoted shall be written in the proper place on the Quote Form. The total amount shall be determined by adding the amounts quoted for each item.
- Changes in any entry shall be made by marking through the entry in ink and making the correct entry adjacent thereto in ink. A representative of the Quoter shall initial the change in ink.
- The Quote shall be properly executed. All Quotes shall show the following information:
  - a. Name of individual, firm, corporation, partnership, or joint venture submitting quote.
  - b. Name of individual or representative submitting quote and position or title.
  - c. Name, signature, and position or title of witness.
  - d. Federal Identification Number
  - e. Contractor's License Number
  - f. Quotes submitted by corporations shall bear the seal of the corporation.
- The Quote shall not contain any unauthorized additions, deletions, or conditional quotes.
- The Quoter shall not add any provision reserving the right to accept or reject an award, or to enter into a contract pursuant to an award.
- A bond or deposit for the Quote is not required.

### **SPC-3 – EEO, Minority Disadvantaged Business Participation, and Drug Free Work Place**

The local government of the City of Concord does not discriminate administering any of its programs and activities. The Contractor awarded the contract for work will be required to assure that no person shall be denied employment or fair treatment, or in any way discriminated against on the basis of race, sex, religion, age, national origin, or disability.

In accordance with 1 NC Administrative Code 30 I.0101, it is the policy of the City of Concord that Quoters undertake good faith efforts to recruit minority – disadvantaged business participation in the work. Reference the City of Concord DBE Program Policy Statement following. Quoters will need to provide an affidavit of good faith efforts to comply with this policy as part of submitting a quote. Firms proposed by Quoters as a participating minority and disadvantaged business with current certification by the NCDOT will be considered acceptable for listing in the Quoter's submittal of MBE-DBE participation.

Forms for use by Quoters in making said good faith efforts to recruit minority – disadvantaged business participation in the project and are hereby made part of the Special Conditions (see following forms).

It is an absolute requirement of the City of Concord that the project work site and work force be drug free and that associated individuals, including subcontractors, working on the project be free of prior or pending felony convictions, the qualifications statement should include a commitment to this requirement and an indication of the plan of the firm to ensure compliance with this requirement.

### **SPC-4 – Award**

The award of the contract, if it is to be awarded, will be based on an evaluation of the quote amounts given by the Quoter for certain, predetermined Pay-Items selected by the Director. Based on the evaluation of these Pay Items, the responsible Quoter will be notified that his/her quote has been accepted and that he/she has been awarded the contract. **The City of Concord reserves the right to reject all quotes.**

### **SPC-5 – Bonding**

A bond for quoting the work is not required. Performance and Payment Bonds for this contract will not be required.

### **SPC-6. – Sales and Use Taxes**

Provisions for sales and use taxes, if any, are set forth by the requirements and direction of the City of Concord Finance Department. A **CONTRACTOR PAY REQUEST** form and a **NORTH CAROLINA SALES TAX REPORT** are provided as part of this Packet.

### **SPC-7. – Locations under the Contract Work are as follows:**

To be as directed by the Transportation Director or his designated representative.

### **SPC-8. – Tree Removal and Replacements in the City of Concord Historic District**

Decorative or Historic Trees located in the public rights-of-way of the City of Concord Historic District will be evaluated on a case-by-case base for removal, pruning and replacement and in coordination with the City of Concord Buildings and Grounds Department.

Unless there is imminent danger to the traveling public or to adjacent property or structures, such trees shall not be removed unless a Certificate of Compliance is approved and granted by the City of Concord Development Services Department. Certificates will be procured by the City of Concord and forwarded to the Contractor. The Contractor will be required to keep issued Certificates on site during the time of the work.

Any and all tree replacements shall be performed by City of Concord Building and Grounds Department personnel.

#### **SPC-9. – Limbing and Pruning for Vertical Clearance on Streets and Sidewalks**

- Typically, the City desires to provide a minimum of 18-ft. of vertical clearance from tree limbs and the roadway surface and a minimum of 8-ft. of vertical clearance from branches and sidewalks. Horizontal clearance should be maintained from the back of curb or back of ditch. In the event that a property owner needs to be consulted as this work, the Contractor shall inform the Director or his representative to make the initial contact with the owner with regards to the work.
- All cuts shall be made sufficiently close to the trunk or parent limb, without cutting into the branch collar or leaving a protruding stub so that closure can readily start under normal conditions
- Where branches are too heavy to handle to prevent splitting or peeling of bark, it shall be necessary to precut these branches. Where necessary to prevent tree or property damage, branches shall be lowered to the ground by proper use of ropes or equipment.
- All branches are to be cut back to a live lateral, shall be at least 1/3 the diameter of the severed branch.
- All stubs not callused over shall be pruned in the same manner as outlined above in this section. Care shall be taken so as not to damage the callusing tissue.
- The Contractor shall not use hydraulic circular saws or climbing irons, spurs or spikes on trees to be pruned or limbed.
- Any tree damaged by the contractor shall be repaired immediately by the Contractor.

#### **SPC-10. – Stump Removals**

- Removal of stump(s) shall be at the direction of the Director or his representative.
- If directed, all exposed portions of a tree stump shall be ground to a depth of 16-in. below the surrounding natural ground level. Surface roots shall be ground to a depth of 6-in. unless otherwise instructed by the Director or his representative. In the event curbing or sidewalk infrastructure prevents stump grinding operations, the Contractor shall coordinate removal of the infrastructure by City forces with the Director or his representative. All portions of roots growing out over curbs, driveways or sidewalks shall be manually removed.
- Stump holes shall be cleared of debris prior to backfilling by the Contractor. Backfilling shall be made with clean dirt, reseeded and mulched.

#### **SPC-11. – Inspection and Final Acceptance of the Work**

In the event that the Contractor or his Subcontractor has a question as to the work, the Contractor will notify the Director or the Director's representative for resolution. The Director or his representative reserves the right to perform all inspection(s) and make all final acceptance of the work.

#### **SPC-12. – Minimum Associated Tool and Appurtenance Requirements for Aerial Lift Bucket Trucks Under This Contract**

<b>Description</b>	<b>Number</b>
8-ft. Pruner (one fiberglass)	2
16-ft. Pruner	1
Double "D" ring climbing saddles with safety locking snaps	2
150-ft. Climbing rope	2
150-ft. Rope for lowering limbs	2
150-ft. "Bull" rope	1
Adjustable buckstraps	2
Climbing spurs (sets)	2
Chainsaw lanyards	2
Safety type gas can	1
Sledge hammer and wedges	1
Canthook	1

8-ft. Log chain	1
First Aid Kit and Fire Extinguisher (Each)	1
Rakes	2
Seed Forks	1
Brush axe	1
Shovel	1
Seed Shovel	1
Cell phone, 2-Way Radio Communication	1
Traffic Control Devices - signs, stands, cones, flags, STOP paddles, etc.	Number per MUTCD

## CITY OF CONCORD DBE PROGRAM

### **POLICY STATEMENT**

#### **Section 26.1, 26.23**

#### **Objectives/Policy Statement**

The City of Concord has established a Disadvantaged Business Enterprise (DBE) program in accordance with regulations of the U.S. Department of Transportation (DOT), 49 CFR Part 26. The City of Concord has received Federal financial assistance from the Department of Transportation, and as a condition of receiving this assistance, the City of Concord has signed an assurance that it will comply with 49 CFR Part 26.

It is the policy of the City of Concord to ensure that DBEs as defined in 49 CFR Part 26, have an equal opportunity to receive and participate in DOT-assisted contracts. It is also our policy:

1. To ensure nondiscrimination in the award and administration of DOT – assisted contracts;
2. To create a level playing field on which DBEs can compete fairly for DOT-assisted contracts;
3. To ensure that the DBE Program is narrowly tailored in accordance with applicable law;
4. To ensure that only firms that fully meet 49 CFR Part 26 eligibility standards are permitted to participate as DBEs;
5. To help remove barriers to the participation of DBEs in DOT assisted contracts;
6. To assist the development of firms that can compete successfully in the market place outside the DBE Program.

The City's Purchasing Officer has been designated as the DBE Liaison Officer. In that capacity, Purchasing Officer is responsible for implementing all aspects of the DBE program. Implementation of the DBE program is accorded the same priority as compliance with all other legal obligations incurred by the City of Concord in its financial assistance agreements with the Department of Transportation.

The City of Concord has disseminated this policy statement to the Concord City Council and all of the components of our organization. We have distributed this statement to DBE and non-DBE business communities that perform work for us on DOT-assisted contracts. The policy statement is available in the City Clerk's office and the DBE Liaison's office and will be mailed to all parties requesting a copy or a City transportation-related RFP, or expressing an interest in obtaining a transportation-related contract with the City.

*W. Ben Hunt* 11/12/2012  
City Manager                      Date

do hereby certify that on this project, we will use the following minority business enterprises as construction subcontractors, vendors, suppliers or providers of professional services.

\*Minority categories: Black, African American (**B**), Hispanic (**H**), Asian American (**A**) American Indian (**I**), Female (**F**) Socially and Economically Disadvantaged (**D**)

MBForms 2002-R

# State of North Carolina AFFIDAVIT A – Listing of Good Faith Efforts

County of \_\_\_\_\_

(Name of Bidder)

Affidavit of \_\_\_\_\_

I have made a good faith effort to comply under the following areas checked:

**Bidders must earn at least 50 points from the good faith efforts listed for their bid to be considered responsive. (1 NC Administrative Code 30 I.0101)**

- ☐ **1 – (10 pts)** Contacted minority businesses that reasonably could have been expected to submit a quote and that were known to the contractor, or available on State or local government maintained lists, at least 10 days before the bid date and notified them of the nature and scope of the work to be performed.
- ☐ **2 --(10 pts)** Made the construction plans, specifications and requirements available for review by prospective minority businesses, or providing these documents to them at least 10 days before the bids are due.
- ☐ **3 – (15 pts)** Broken down or combined elements of work into economically feasible units to facilitate minority participation.
- ☐ **4 – (10 pts)** Worked with minority trade, community, or contractor organizations identified by the Office of Historically Underutilized Businesses and included in the bid documents that provide assistance in recruitment of minority businesses.
- ☐ **5 – (10 pts)** Attended prebid meetings scheduled by the public owner.
- ☐ **6 – (20 pts)** Provided assistance in getting required bonding or insurance or provided alternatives to bonding or insurance for subcontractors.
- ☐ **7 – (15 pts)** Negotiated in good faith with interested minority businesses and did not reject them as unqualified without sound reasons based on their capabilities. Any rejection of a minority business based on lack of qualification should have the reasons documented in writing.
- ☐ **8 – (25 pts)** Provided assistance to an otherwise qualified minority business in need of equipment, loan capital, lines of credit, or joint pay agreements to secure loans, supplies, or letters of credit, including waiving credit that is ordinarily required. Assisted minority businesses in obtaining the same unit pricing with the bidder's suppliers in order to help minority businesses in establishing credit.
- ☐ **9 – (20 pts)** Negotiated joint venture and partnership arrangements with minority businesses in order to increase opportunities for minority business participation on a public construction or repair project when possible.
- ☐ **10 - (20 pts)** Provided quick pay agreements and policies to enable minority contractors and suppliers to meet cash-flow demands.

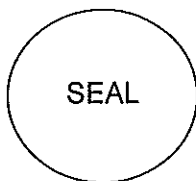
The undersigned, if apparent low bidder, will enter into a formal agreement with the firms listed in the Identification of Minority Business Participation schedule conditional upon scope of contract to be executed with the Owner. Substitution of contractors must be in accordance with GS143-128.2(d) Failure to abide by this statutory provision will constitute a breach of the contract.

The undersigned hereby certifies that he or she has read the terms of the minority business commitment and is authorized to bind the bidder to the commitment herein set forth.

Date: \_\_\_\_\_ Name of Authorized Officer: \_\_\_\_\_

Signature: \_\_\_\_\_

Title: \_\_\_\_\_



State of North Carolina, County of \_\_\_\_\_

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_

Notary Public \_\_\_\_\_

My commission expires \_\_\_\_\_

**State of North Carolina --AFFIDAVIT B-- Intent to Perform Contract  
with Own Workforce.**

County of \_\_\_\_\_

Affidavit of \_\_\_\_\_

(Name of Bidder)

I hereby certify that it is our intent to perform 100% of the work required for the \_\_\_\_\_

\_\_\_\_\_ contract.

(Name of Project)

In making this certification, the Bidder states that the Bidder does not customarily subcontract elements of this type project, and normally performs and has the capability to perform and will perform all elements of the work on this project with his/her own current work forces; and

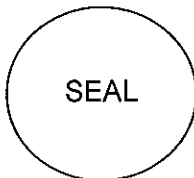
The Bidder agrees to provide any additional information or documentation requested by the owner in support of the above statement.

The undersigned hereby certifies that he or she has read this certification and is authorized to bind the Bidder to the commitments herein contained.

Date: \_\_\_\_\_ Name of Authorized Officer: \_\_\_\_\_

Signature: \_\_\_\_\_

Title: \_\_\_\_\_



State of North Carolina, County of \_\_\_\_\_

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_

Notary Public \_\_\_\_\_

My commission expires \_\_\_\_\_

# State of North Carolina - AFFIDAVIT C - Portion of the Work to be Performed by Minority Firms

County of \_\_\_\_\_

(Note this form is to be submitted only by the apparent lowest responsible, responsive bidder.)

If the portion of the work to be executed by minority businesses as defined in GS143-128.2(g) is equal to or greater than 10% of the bidders total contract price, then the bidder must complete this affidavit. This affidavit shall be provided by the apparent lowest responsible, responsive bidder within **72 hours** after notification of being low bidder.

Affidavit of \_\_\_\_\_ I do hereby certify that on the  
(Name of Bidder)

(Project Name)  
Project ID# \_\_\_\_\_ Amount of Bid \$ \_\_\_\_\_

I will expend a minimum of \_\_\_\_\_% of the total dollar amount of the contract with minority business enterprises. Minority businesses will be employed as construction subcontractors, vendors, suppliers or providers of professional services. Such work will be subcontracted to the following firms listed below. Attach additional sheets if required

Name and Phone Number	*Minority Category	Work description	Dollar Value

\*Minority categories: Black, African American (B), Hispanic (H), Asian American (A) American Indian (I), Female (F) Socially and Economically Disadvantaged (D)

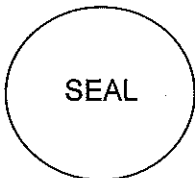
Pursuant to GS143-128.2(d), the undersigned will enter into a formal agreement with Minority Firms for work listed in this schedule conditional upon execution of a contract with the Owner. Failure to fulfill this commitment may constitute a breach of the contract.

The undersigned hereby certifies that he or she has read the terms of this commitment and is authorized to bind the bidder to the commitment herein set forth.

Date: \_\_\_\_\_ Name of Authorized Officer: \_\_\_\_\_

Signature: \_\_\_\_\_

Title: \_\_\_\_\_



State of North Carolina, County of \_\_\_\_\_

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_

Notary Public \_\_\_\_\_

My commission expires \_\_\_\_\_

# State of North Carolina

## AFFIDAVIT D – Good Faith Efforts

County of \_\_\_\_\_

(Note this form is to be submitted only by the apparent lowest responsible, responsive bidder.)

If the goal of 10% participation by minority business **is not** achieved, the Bidder shall provide the following documentation to the Owner of his good faith efforts:

(Name of Bidder)

Affidavit of: \_\_\_\_\_

I do certify the attached documentation as true and accurate representation of my good faith efforts.

(Attach additional sheets if required)

Name and Phone Number	*Minority Category	Work description	Dollar Value

\*Minority categories: Black, African American (B), Hispanic (H), Asian American (A) American Indian (I), Female (F) Socially and Economically Disadvantaged (D)

Documentation of the Bidder's good faith efforts to meet the goals set forth in these provisions.

Examples of documentation include, but are not limited to, the following evidence:

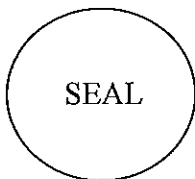
- A. Copies of solicitations for quotes to at least three (3) minority business firms from the source list provided by the State for each subcontract to be let under this contract (if 3 or more firms are shown on the source list). Each solicitation shall contain a specific description of the work to be subcontracted, location where bid documents can be reviewed, representative of the Prime Bidder to contact, and location, date and time when quotes must be received.
- B. Copies of quotes or responses received from each firm responding to the solicitation.
- C. A telephone log of follow-up calls to each firm sent a solicitation.
- D. For subcontracts where a minority business firm is not considered the lowest responsible sub-bidder, copies of quotes received from all firms submitting quotes for that particular subcontract.
- E. Documentation of any contacts or correspondence to minority business, community, or contractor organizations in an attempt to meet the goal.
- F. Copy of pre-bid roster.
- G. Letter documenting efforts to provide assistance in obtaining required bonding or insurance for minority business.
- H. Letter detailing reasons for rejection of minority business due to lack of qualification.
- I. Letter documenting proposed assistance offered to minority business in need of equipment, loan capital, lines of credit, or joint pay agreements to secure loans, supplies, or letter of credit, including waiving credit that is ordinarily required.

Failure to provide the documentation as listed in these provisions may result in rejection of the bid and award to the next lowest responsible and responsive bidder.

Date: \_\_\_\_\_ Name of Authorized Officer: \_\_\_\_\_

Signature: \_\_\_\_\_

Title: \_\_\_\_\_



State of North Carolina, County of \_\_\_\_\_  
 Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_  
 Notary Public \_\_\_\_\_  
 My commission expires \_\_\_\_\_

**EXHIBIT "C"**  
**NOTICE OF AWARD AND ACCEPTANCE OF NOTICE**

TO:

FROM: City of Concord  
P.O. Box 308 - 26 Union Street, South  
Concord, North Carolina 28026-0308

PROJECT: Removal of Hazardous Tree Limbs and / or Trees within City Street Rights-of-Way  
Contract No. TLR13

You are hereby notified that the quote submitted by you for the above named project in response to the City of Concord's solicitation for quotes dated the 2nd day of April 2012, in the amount of \_\_\_\_\_ and 00/100.....DOLLARS (\$) has been accepted.

You are hereby requested to execute the formal contract with the City of Concord and to furnish any and all Contractor's Certificate of Insurance, Performance Bond, Payment Bond, and associated Power of Attorney(s) along with other documents pertaining to the work as designated by the City of Concord.

Dated this the day of \_\_\_\_\_, 2012

City of Concord, North Carolina

By: \_\_\_\_\_  
Title: City Manager

**ACCEPTANCE OF NOTICE**

Receipt of the above **NOTICE OF AWARD** is hereby acknowledged this the \_\_\_\_ day of \_\_\_\_\_, 2012.

\_\_\_\_\_  
Witness

By: \_\_\_\_\_

Title: \_\_\_\_\_



**EXHIBIT "D"**  
**ATTACHMENT SHEET FOR**  
**CERTIFICATE(S) OF INSURANCE**

(Refer to Contract Sec. 7. Insurance, for other information and directions for insurance certificates.)

**TRANSPORTATION DEPARTMENT**  
**P.O. Box 308 - 850 Warren C. Coleman Blvd.**  
**Concord, North Carolina 28026-0308**  
**704-920-5331**



**EXHIBIT "E"**  
**ATTACHMENT SHEET FOR**  
**PERFORMANCE & PAYMENT BONDS**

**(NOT REQUIRED THIS CONTRACT)**

**TRANSPORTATION DEPARTMENT**  
**P.O. Box 308 - 850 Warren C. Coleman Blvd.**  
**Concord, North Carolina 28026-0308**  
**704-920-5331**

**PERFORMANCE BOND**  
**(Not Required This Contract)**

Date of Execution of this Bond

\_\_\_\_\_

Name and Address of  
Principal (Contractor)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Name and Address  
of Surety

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Name and Address of  
Contracting Body

City of Concord  
26 Union Street, South P.O. Box 308  
Concord, North Carolina 28025

Amount of Bond

\_\_\_\_\_  
\_\_\_\_\_

Contract

That certain contract by and between the Principal and the Contracting  
Body above named dated Notice to Proceed Date specified on  
EXHIBIT G For:

KNOW ALL MEN BY THESE PRESENTS, that we, the PRINCIPAL and SURETY above named, are held and firmly bound unto the above-named Contracting Body, hereinafter called the Contracting Body, in the penal sum of the amount stated above for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, and successors, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH, that whereas the Principal entered into a certain contract with the Contracting Body, identified as shown above and hereto attached;

NOW THEREFORE, if the Principal shall well and truly perform and fulfill all the undertakings, covenants, terms, conditions, and agreements of said contract during the original term of said contract and any extensions thereof that may be granted by the Contracting Body, with or without notice to the Surety, and during the life of any guaranty required under the contract, and shall also well and truly perform and fulfill all the undertakings, covenants, terms, conditions, and agreements of any and all duly authorized modifications of the contract that may hereafter be made, notice of which modifications to the Surety being hereby waived, then, this obligation to be void; otherwise, to remain in full force and virtue.

**PERFORMANCE BOND: (Continued)**  
**(Not Required This Contract)**

THIS PERFORMANCE BOND is made and given pursuant to the requirements and provisions of Section 129 of Chapter 143 of the General Statutes of North Carolina and pursuant to Article 3 of Chapter 44-A of the General Statutes of North Carolina, and each and every provision set forth and contained in Section 129 of Chapter 143 and in Article 3 of Chapter 44-A of the General Statutes of North Carolina is incorporated herein, made a part hereof, and deemed to be conclusively written into this Bond.

IN WITNESS WHEREOF, the above-bounden parties have executed this instrument under their several seals as of the date indicated above, the name and corporate seal of each corporate party being hereto affixed and these presents duly signed by its undersigned and representative, pursuant to authority of its governing body.

WITNESS:

\_\_\_\_\_  
(Proprietorship or Partnership)

\_\_\_\_\_  
Principal (Name of individual and trade name,  
partnership, corporation, or joint venture)

BY \_\_\_\_\_(SEAL)

TITLE \_\_\_\_\_  
(Owner, Partner, Office held in  
corporation, joint venture)

ATTEST: (Corporation)

(Corporate Seal of Principal)

BY \_\_\_\_\_

TITLE \_\_\_\_\_  
(Corporation Secretary or  
Assistant Secretary Only)

WITNESS:

\_\_\_\_\_

\_\_\_\_\_  
Surety (Name of Surety Company)

BY \_\_\_\_\_

TITLE \_\_\_\_\_ Attorney in Fact

(Corporate Seal of Surety)

COUNTERSIGNED:

\_\_\_\_\_  
(Address of Attorney in Fact)

\_\_\_\_\_  
N.C. Licensed Resident Agent



**EXHIBIT "F"**  
**FINANCE DEPARTMENT**  
**SUPPLIED FORMS**

(Refer to the following forms for Sales Tax and Payment Requests.)

**TRANSPORTATION DEPARTMENT**

**P.O. Box 308 - 850 Warren C. Coleman Blvd.**  
**Concord, North Carolina 28026-0308**  
**704-920-5331**

City of Concord  
Post Office Box 308  
Concord, North Carolina 28026-0308

For Office Use Only:

Charge to P.O. # \_\_\_\_\_

Due \_\_\_\_\_

**PROJECT: Contract No. TLR13**

Date Notice to Proceed: \_\_\_\_\_

Completion Date: \_\_\_\_\_

Days Remaining in Contract: \_\_\_\_\_

Percent Work Complete: \_\_\_\_\_

Percent Time Complete: \_\_\_\_\_

Percent Payment Complete: \_\_\_\_\_

**APPLICATION FOR PAYMENT NO. \_\_\_\_\_ SHEET NO. \_\_\_\_\_ OF \_\_\_\_\_**

**PERIOD FROM: \_\_\_\_\_ TO: \_\_\_\_\_**

**CERTIFICATE OF THE CONTRACTOR**

To the best of my knowledge and belief, I certify that this periodical estimate is correct and all work has been performed and materials supplied in full accordance with the terms and conditions of the contract documents between the undersigned contractor and the City of Concord.

**GROSS AMOUNT OF PARTIAL PAYMENT---\$**

**LESS: RETAINAGE AT \_\_\_\_ PERCENT ----- \$**

**PREVIOUS PAYMENT ----- \$**

**LIQUIDATION DAMAGES**

**\_\_\_\_ DAYS @ \$ ----- \$**

**OTHER DEDUCTIONS:**

----- \$

----- \$

**TOTAL DEDUCTIONS ----- \$**

**NET AMOUNT DUE THIS ESTIMATE ----- \$**

Name of Contractor: \_\_\_\_\_ Address: \_\_\_\_\_

Signed: \_\_\_\_\_ Title: \_\_\_\_\_ Date: \_\_\_\_\_

**CERTIFICATE OF CONSTRUCTION ADMINISTRATOR/ENGINEER**

I certify that I have verified this periodical estimate and that to the best of my knowledge and belief, it is a true and correct statement of work performed and materials supplied under the contract.

Consultant Engineer: \_\_\_\_\_ Date: \_\_\_\_\_

Construction Administrator: \_\_\_\_\_ Date: \_\_\_\_\_

**APPROVED AND PAYMENT RECOMMENDED:**

**CITY OF CONCORD**

Signed: \_\_\_\_\_ Title: \_\_\_\_\_ Date: \_\_\_\_\_

OWNER: City of Concord CONTRACTOR: \_\_\_\_\_

PROJECT: Contract No. TLR13 PURCHASE ORDER: \_\_\_\_\_

I certify that the above listed vendors were paid sales tax upon purchases of materials during the period covered by the Construction Estimate, and the property upon which such taxes were paid with or will be used in the performance of this contract. No tax on purchases or rentals of tools and/or equipment is included in the above list. All of the materials above became a part of or is annexed to the building or structure being erected, altered or repaired.

SWORN AND SUBSCRIBED BEFORE  
ME THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, \_\_\_\_\_.

NOTARY PUBLIC  
MY COMMISSION EXPIRES:

**EXHIBIT "G"**  
**NOTICE TO PROCEED**  
**(DATE OF AVAILABILITY)**

TO:

FROM: City of Concord  
P.O. Box 308 - 26 Union Street, South  
Concord, North Carolina 28026-0308

PROJECT: Removal of Hazardous Tree Limbs and / or Trees within City Street Rights-of-Way  
Contract No. TLR13

PROJECT DESCRIPTION: The work consists of the selected Contractor pruning, limbing, or removal of specified, hazardous limbs and / or trees during non-emergency and emergency situations including mobilization(s), set-ups and take-downs, all labor including special subcontracting, equipment, vehicles, materials, miscellaneous hardware, tools, consumables, fuel, other incidentals, traffic control and safety operations, cleanup, grinding and disposal(s) to an approved site, seeding and mulching (if needed), touch-up repairs, handwork, administrative cost, insurance, and overhead, and all else required to complete the work to the satisfaction of the Director and the City. All work and materials shall meet and be in accordance with the provisions of the Occupational Safety and Health Administration, the North Carolina Department of Labor, the North Carolina Department of Transportation Standard Specifications for Roads and Structures, Latest Edition, the Manual on Uniform Traffic Control Devices, Latest Edition and all other applicable Federal State and Local laws and regulations. At the option of the City and upon written agreement with the Contractor, this contract may be renewed for an additional one (1) year.

You are hereby formally notified to commence work on the 1st day of July, 2012 under the assigned City of Concord Purchase Order No. \_\_\_\_\_ in accordance with the contract documents for the work.

Dated this the 1st day of July, 2012

**City of Concord, North Carolina**

By \_\_\_\_\_  
Title: City Manager

**STANDARD FORM CONSTRUCTION CONTRACT**  
**Removal of Hazardous Tree Limbs and / or Trees**  
**within City Street Rights-of-Way Contract No. TLR13**

This contract is made and entered into as of the 1st day of July, 2012, by the City of CONCORD ("City") and \_\_\_\_\_ ("Contractor"), ( ) a corporation, ( ) a professional corporation, ( ) a professional association, ( ) a limited partnership, ( ) a sole proprietorship, or ( ) a general partnership; organized and existing under the laws of the State of \_\_\_\_\_.

**Sec. 1. Background and Purpose.** This contract is for the pruning, limbing, or removal of specified, hazardous limbs and / or trees located within the rights-of-way of the Public Street and Sidewalk Systems of the City. The Contractor shall keep himself fully informed of all Federal, State, and local laws, ordinances, and regulations.

**Sec. 2. Services and Scope to be Performed.** The Contractor shall provide pruning, limbing, or removal of specified, hazardous limbs and / or trees during non-emergency and emergency situations including mobilization(s), set-ups and take-downs, all labor including special subcontracting, equipment, vehicles, materials, miscellaneous hardware, tools, consumables, fuel, other incidentals, traffic control and safety operations, cleanup, grinding and disposal(s) to an approved site, seeding and mulching (if needed), touch-up repairs, handwork, administrative cost, insurance, and overhead, and all else required to complete the work to the satisfaction of the Director and the City in accordance with this contract guardrail installation, replacement, removal, relocation, and /or reinstallation work, as needed, at the charges set forth either in this paragraph or in Exhibit "A" at locations designated by the City of Concord Transportation Department. Additional Exhibits may be used to further define this Agreement when the Contractor and City so agree. Any additional exhibits shall be designated as exhibits to the Agreement with capitalized, sequential letters of the alphabet, shall be attached hereto and incorporated herein by reference as if the same were fully recited, and shall become terms of this Agreement upon execution by both parties. All work and materials shall meet and be in accordance with the provisions of the North Carolina Department of Transportation Standard Specifications for Roads and Structures, Latest Edition, the North Carolina Department of Transportation Roadways Standards Drawings, Latest Edition and the Manual on Uniform Traffic Control Devices, Latest Edition. The Contractor shall keep himself fully informed of all Federal, State and local laws, ordinances, and regulations. In this contract, "services" means the services that the Contractor is required to perform pursuant to this contract and all of the Contractor's duties to the City that arise out of this contract. Any amendments, corrections, or change orders by either party must be made in writing signed in the same manner as the original. (This form may be used for amendments and change orders.) The City reserves the right to refuse payment for any work outside that authorized herein or pursuant to a duly approved amendment or change order.

**Sec. 3. Complete Work without Extra Cost.** Unless otherwise provided, the Contractor shall obtain and provide, without additional cost to the City, all labor, materials, equipment, transportation, facilities, services, permits, and licenses necessary to perform the Work.

**Sec. 4. Compensation.** The City shall pay the Contractor for the Work as described in this paragraph below OR as described in Exhibit A attached. In the event of a conflict, the provisions of this paragraph shall control. Any additional expenses or charges shall only be paid after both the City and the Contractor agree to and execute a written change order. The City shall not be obligated to pay the Contractor any fees, payments, expenses or compensation other than those authorized in this contract or in a duly-approved change order.

**Sec. 4a. Retainage.** The City shall withhold no retainage on Contracts having a "total project cost" of less than \$100,000.00. The City may withhold retainage on contracts having a total project cost between \$100,000 and \$299,000. The City shall withhold retainage on contracts whose total project cost exceeds \$300,000. When withheld, retainage shall equal no more than five percent of each progress payment. When the project is fifty per cent complete, the City shall not retain anything from future project payments provided that (i) the surety concurs in writing, (ii) the Contractor continues to perform satisfactorily, (iii) any non-conforming work identified in writing by the architect, engineer(s) or City has been corrected by the Contractor and accepted by the architect, engineer(s) or City. However, if the City determines that the Contractor's performance is unsatisfactory, the City may withhold up to five percent retainage from each project payment. The City may withhold additional amounts above five percent for unsatisfactory

job progress, defective construction not remedied, disputed work, third party claims filed against the owner or reasonable evidence that a third-party claim will be filed.

**Definitions:**

**"Total Project Cost":** Total value of the Contract and any approved change orders or amendments.

**"Project Fifty Percent Complete":** When the Contractor's gross project invoices (excluding the value of the materials stored off-site) equal or exceed fifty percent of the value of the contract, except that the value of materials stored on-site shall not exceed twenty percent of the Contractor's gross project invoices for the purpose of determining whether the project is fifty percent complete.

**Sec.5. Term.** This Contract shall begin on Notice to Proceed Date specified on EXHIBIT H and end at June 30, 2013 "Completion Date". All work as set forth in the Scope of Services in Exhibit "A" shall be completed within one (1) year of the Notice to Proceed Date. Time is of the essence with regard to this Project. If Contractor's obligations are not completed by the June 30, 2013 "Completion Date" or a contract extension Completion Date as mutually agreed to in writing by the City and the Contractor, the City reserves the right to nullify this Agreement, order the Contractor to immediately cease all work under this Agreement and vacate the premises, and to seek professional services equivalent to those outlined in Exhibit "A." The Contractor shall be held accountable for all damages incurred by the City as a consequence of the missed Completion Date. The exercise of any of these rights by the City shall not be interpreted to prejudice any other rights the City may have in law or equity. This Contract shall not be automatically extended unless agreed to in writing by the City or as provided in Exhibit "A". At the option of the City and upon written agreement with the Contractor, this contract may be renewed for an additional one (1) year.

**Sec. 6. Contractor's Billings to City.** Payments will be made in accordance with the schedule found in this section below OR attached at Exhibit A. Contractor shall submit an original pay request (invoice) to the City Purchasing Agent by the first of each month in order to expedite payment. Upon receipt of the request the City Purchasing Agent shall verify the amounts and if correct forward the request to the Accounts Receivable Division of the Finance Dept. Final payment on the contract shall be made in 45 days, except in the case of retainage. Within 60 days after the submission of the final pay request, the City (with the written consent of the surety) shall release to the Contractor all retainage payments IF the City receives a certificate of substantial completion from the architect, engineer or designer-in-charge of the project OR the City receives beneficial occupancy and use of the project. In either case, the City may retain up to 2.5 times the estimated value of the work to be completed or corrected.

**Sec. 7. Insurance.** Contractor shall maintain and cause all sub-contractors to maintain insurance policies at all times with minimum limits as follows:

<u>Coverage</u>	<u>Minimum Limits</u>
Workers' Compensation	\$100,000 each accident, \$100,000 bodily injury by disease, \$500,000 bodily injury by disease policy limit
General Liability	<input type="checkbox"/> \$500,000 per occurrence if contract does not exceed 30 days and does not exceed \$25,000; otherwise, <input checked="" type="checkbox"/> \$1,000,000 per occurrence/\$2,000,000 aggregate
Automobile Liability	<input type="checkbox"/> \$500,000 per occurrence if contract does not exceed 180 days and does not exceed \$500,000; otherwise, <input checked="" type="checkbox"/> \$1,000,000 per occurrence
Umbrella	<input type="checkbox"/> \$1,000,000 per occurrence if contract does not exceed 180 days and does not exceed \$500,000; otherwise, <input checked="" type="checkbox"/> \$2,000,000

Contractor shall provide a Certificate of Insurance to the City listing the City as an additional insured. Such Certificate shall be in a form acceptable to the City.

**Sec. 8. Documentation Requirements:**

A. Contractor shall provide the City with a **Certificate of Insurance** for review prior to the issuance of any contract or Purchase Order. All Certificates of Insurance will require written notice by the insurer or contractor's agent in the event of cancellation, reduction or other modifications of coverage by the insurer. Such notice shall be not less than 30 days for nonrenewal by the insurer, not less than 10 days for cancellation due to nonpayment of the premium and as soon as possible for all other types of modifications. In addition to the notice requirement above, Contractor shall provide the City with written notice of cancellation, reduction, or other modification of coverage of insurance whether instigated by the insurer or by the Contractor immediately upon Contractor's receipt of knowledge of such modifications. Upon failure of the Contractor to provide such notice, Contractor assumes sole responsibility for all losses incurred by the City for which insurance would have provided coverage. The insurance certificate shall be for the insured period in which the initial contract period begins and shall be renewed by the contractor for each subsequent renewal period of the insurance for so long as the contract remains in effect.

The City shall be named as an **additional insured** on all policies except Workers' Compensation and it is required that coverage be placed with "A" rated insurance companies acceptable to the City. Statement should read, "City of Concord is added as an additional insured as evidenced by an endorsement attached to this certificate." Failure to maintain the required insurance in force may be cause for termination of this Agreement. In the event that the contractor fails to maintain and keep in force the insurance herein required, the City has the right to cancel and terminate the Agreement without notice.

B. All those doing business with the City must have a current **Privilege License** issued by the City of Concord if a privilege license is authorized by law.

C. Contractor shall provide a completed W-9 form to the City prior to execution by the City of this Agreement.

**Sec. 9. Performance of Work by Contractor.**

(a) The Contractor warrants that all work performed under this contract conforms to the contract requirements and is free of any defect in equipment, material, or design furnished, or workmanship performed by the Contractor or any subcontractor or supplier at any tier. This warranty shall continue for a period of 1 year from the date of issuance by the City of written final completion of the work.

(b) The Contractor shall remedy at the Contractor's expense any failure to conform, or any defect. In addition, the Contractor shall remedy at the Contractor's expense any damage to City - owned or controlled real or personal property, when that damage is the result of--

(1) The Contractor's failure to conform to contract requirements; or

(2) Any defect of equipment, material, workmanship, or design furnished.

(c) The Contractor shall restore any work damaged in fulfilling the terms and conditions of this clause. The Contractor's warranty with respect to work repaired or replaced will run for 1 year from the date of repair or replacement.

(d) The City shall notify the Contractor, in writing, within a reasonable time, not to exceed 30 days, after the discovery of any failure, defect, or damage.

(e) If the Contractor fails to remedy any failure, defect, or damage within a reasonable time, not to exceed 30 days unless otherwise agreed in writing and signed by the City Manager or his designee, after receipt of notice, the City shall have the right to replace repair, or otherwise remedy the failure, defect, or damage at the Contractor's expense.

(f) With respect to all warranties, express or implied, from subcontractors, manufacturers, or suppliers for work performed and materials furnished under this contract, the Contractor shall--

- (1) Obtain all warranties that would be given in normal commercial practice,
- (2) Require all warranties to be executed, in writing, for the benefit of the City, if directed to do so by the City; and
- (3) Enforce all warranties for the benefit of the City, if directed to do so by the City

(g) In the event the Contractor's warranty has expired, the City may bring suit at its expense to enforce a subcontractor's, manufacturer's, or supplier's warranty.

(h) Unless a defect is caused by the negligence of the Contractor or subcontractor or supplier at any tier, the Contractor shall not be liable for the repair of any defects of material or design furnished by the City nor for the repair of any damage that results from any defect in City-furnished material or design.

**Sec. 10. Performance of Work by City.** If the Contractor fails to perform the Work in accordance with the schedule referred to in Exhibit "A", the City may, in its discretion, perform or cause to be performed some or all of the Work, and doing so shall not waive any of the City's rights and remedies. Before doing so, the City shall give the Contractor reasonable notice of its intention. The Contractor shall reimburse the City for all costs incurred by the City in exercising its right to perform or cause to be performed some or all of the Work pursuant to this section.

**Sec. 11. Attachments.** The following attachments are made a part of this contract and incorporated herein by reference: SOLICITATION OF QUOTES, EXHIBIT "A" GENERAL CONDITIONS AND QUOTE FORM, ANY ADDENDUM(S) TO EXHIBIT A, EXHIBIT "B" SPECIAL CONDITIONS, INCLUDING ANY SPREADSHEET(S) AND MAP(S), CITY OF CONCORD DBE PROGRAM POLICY STATEMENT, MINORITY BUSINESS FORMS, EXHIBIT "C" NOTICE OF AWARD AND ACCEPTANCE OF NOTICE, EXHIBIT "D" ATTACHMENT SHEET FOR AND CERTIFICATE(S) OF INSURANCE, EXHIBIT "E" ATTACHMENT SHEET FOR AND PERFORMANCE & PAYMENT BOND(s), EXHIBIT "F" ATTACHMENT SHEET FOR AND FINANCE FORMS, EXHIBIT "G" NOTICE TO PROCEED, AND ANY WRITTEN CHANGE ORDERS OR DIRECTIVES TO THE CONTRACTOR BY THE DIRECTOR.

In case of conflict between an attachment and the text of this contract excluding the attachment, the text of this contract shall control. Any attachment that materially alters the standard terms contained herein must be reviewed by the City Attorney and approved by the City in writing.

**Sec. 12. Notice.** (a) All notices and other communications required or permitted by this contract shall be in writing and shall be given either by personal delivery, fax, or certified United States mail, return receipt requested, addressed as follows:

**To the City:**

J.K. Wilson, III, PE  
City of Concord  
P.O. Box 308  
Concord, NC 28206  
Fax Number: (704) 795-0404

**To the Contractor:**

Albert Benshoff, Esq.  
City Attorney  
PO Box 308  
Concord, NC 28026  
Fax Number: (704) 784-1791

(b) **Change of Address, Date Notice Deemed Given:** A change of address, fax number, or person to receive notice may be made by either party by notice given to the other party. Any notice or other communication under this contract shall be deemed given at the time of actual delivery, if it is personally delivered or sent by fax. If the notice or other communication is sent by US Mail, it shall be deemed given upon the third calendar day following the day on which such notice or other communication is deposited with the US Postal Service or upon actual delivery, whichever first occurs.

**Sec. 13. Indemnification.** To the maximum extent allowed by law, the Contractor shall defend, indemnify, and save harmless the City of Concord, its agents, officers, and employees, from and against all charges that arise in any

manner from, in connection with, or out of this contract as a result of the acts or omissions of the Contractor or subcontractors or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable except for damage or injury caused solely by the negligence of the City its agents, officers, or employees. In performing its duties under this section, the Contractor shall at its sole expense defend the City of Concord, its agents, officers, and employees with legal counsel reasonably acceptable to City. As used in this subsection – “Charges” means claims, judgments, costs, damages, losses, demands, liabilities, duties, obligations, fines, penalties, royalties, settlements, expenses, interest, reasonable attorney’s fees, and amounts for alleged violations of sedimentation pollution, erosion control, pollution, or other environmental laws, regulations, ordinances, rules, or orders. Nothing in this section shall affect any warranties in favor of the City that are otherwise provided in or arise out of this contract. This section is in addition to and shall be construed separately from any other indemnification provisions that may be in this contract. This section shall remain in force despite termination of this contract (whether by expiration of the term or otherwise) and termination of the services of the Contract under this contract.

**Sec. 14. Corporate Status.** If the Contractor is dissolved or suspended and the Contractor does not notify the City of such dissolution within three (3) business days from date of dissolution or suspension, and/or the corporate status is not reinstated within thirty (30) days, this contract, at the sole option of the City, shall be declared null and void or the Contractor shall execute a new contract showing the Contractor’s correct legal entity.

**Sec. 15. Miscellaneous.**

(a) Choice of Law and Forum. This contract shall be deemed made in Cabarrus County, North Carolina. This contract shall be governed by and construed in accordance with the laws of North Carolina. The exclusive forum and venue for all actions arising out of this contract shall be the appropriate division of the North Carolina General Court of Justice, in Cabarrus County. Such actions shall neither be commenced in nor removed to federal court. This section shall not apply to subsequent actions to enforce a judgment entered in actions heard pursuant to this section.

(b) Waiver. No action or failure to act by the City shall constitute a waiver of any of its rights or remedies that arise out this contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed in writing.

(c) Performance of Government Functions. Nothing contained in this contract shall be deemed or construed so as to in any way estop, limit, or impair the City from exercising or performing any regulatory, policing, legislative, governmental, or other powers or functions.

(d) Severability. If any provision of this contract shall be unenforceable, the remainder of this contract shall be enforceable to the extent permitted by law.

(e) Assignment, Successors and Assigns. Without the City’s written consent, the Contractor shall not assign (which includes to delegate) any of its rights (including the right to payment) or duties that arise out this contract. Unless the City otherwise agrees in writing, the Contractor and all assigns shall be subject to all of the City’s defenses and shall be liable for all of the Contractor’s duties that arise out of this contract and all of the City’s claims that arise out of this contract. Without granting the Contractor the right to assign, it is agreed that the duties of the Contractor that arise out of this contract shall be binding upon it and its heirs, personal representatives, successors, and assigns.

(f) Compliance with Law. In performing all of the Work, the Contractor shall comply with all applicable law.

(g) City Policy. THE CITY OPPOSES DISCRIMINATION ON THE BASIS OF RACE AND SEX AND URGES ALL OF ITS CONTRACTORS TO PROVIDE A FAIR OPPORTUNITY FOR MINORITIES AND WOMEN TO PARTICIPATE IN THEIR WORK FORCE AND AS SUBCONTRACTORS AND VENDORS UNDER CITY CONTRACTS.

(h) EEO Provisions. During the performance of this Contract the Contractor agrees as follows:

(1) The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, political affiliation or belief, age, or handicap. The Contractor shall take affirmative action to insure that applicants are employed and that employees are treated equally during employment, without regard to race, color, religion, sex, national origin, political affiliation or belief, age, or handicap. The Contractor shall post in conspicuous places available to employees and applicants for employment, notices setting forth these EEO provisions.

(2) The Contractor in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, national origin, political affiliation or belief, age, or handicap.

(i) No Third Party Right Created. This contract is intended for the benefit of the City and the Contractor and not any other person.

(j) Principles of Interpretation. In this contract, unless the context requires otherwise the singular includes the plural and the plural the singular. The pronouns "it" and "its" include the masculine and feminine. Reference to statutes or regulations include all statutory or regulatory provisions consolidating, amending, or replacing the statute or regulation. References to contracts and agreements shall be deemed to include all amendments to them. The word "person" includes natural persons, firms, companies associations, partnerships, trusts, corporations, governmental agencies and units, and any other legal entities.

(k) Modifications, Entire Agreement. A modification of this contract is not valid unless signed by both parties and otherwise in accordance with requirements of law. Further, a modification is not enforceable against the City unless the City Manager or other duly authorized official signs it for the City. This contract contains the entire agreement between the parties pertaining to the subject matter of this contract. With respect to that subject matter, there are no promises, agreements, conditions, inducements, warranties, or understandings, written or oral, expressed or implied, between the parties, other than as set forth or referenced in this contract. .

**(The following section applies to construction contracts only if amount is over \$50,000)**

**Sec. 16. Bonding.** Both performance and payment bonds for the full amount of this Contract are required to be attached. Instead of bonds, you may submit a letter from your banker or stockbroker stating that cash, certified checks or government securities in the amount of this Contract will be submitted. The performance bond shall have a value equal to 100% of this Contract. This bond shall be conditioned upon faithful performance of the contract in accordance with the plans, specifications and conditions of the contract. The performance bond shall be solely for the protection of the City. The payment bond shall be in an amount equal to 100% of the Contract, and conditioned upon the prompt payment for all labor or materials for which a contractor or subcontractor is liable. The payment bond shall be solely for the protection of the persons furnishing materials or performance labor for which a contractor or subcontractor is liable.

**Sec. 17. Dispute Resolution.** It is understood and agreed that NCGS 143-128(f1-g) requires that disputes arising under an agreement for the erection, construction, alteration or repair of a building be subject to a dispute resolution process specified by the City. In compliance with this statutory provision, the City specifies this Section as the dispute resolution process to be used on this Project. It is further understood and agreed that this dispute resolution process is based on non-binding mediation and will only be effective to the extent that the Parties to any mediated dispute participate in the mediation in good faith. It is also understood and agreed that the City is under no obligation under any circumstance to secure or enforce the participation of any other Party in the mediation of any dispute subject to this Section and NCGS 143-128(f1-g).

**This Section 17 does not apply to:**

- (a) The purchase and erection of prefabricated or relocatable buildings or portions of such buildings, except that portion of the work that must be performed at the construction site; or
- (b) The erection, construction alteration or repair of a building when the cost of such building is \$300,000 or less.

17.1 Any dispute arising between or among the Parties listed in Section 17.3 that arises from an agreement to construct the Project, including without limitation a breach of such agreement, shall be subject to non-binding mediation administered by the American Arbitration Association under its Construction Industry Mediation Rules ("Rules"), except as otherwise expressly set forth in this Section. To the extent any provision of the Rules is inconsistent with the provisions of this Section, the provisions of this Section shall control. The mediation provided in this Section shall be used pursuant to this Agreement and NCGS 143-128(F1-g) and is in lieu of any dispute resolution process adopted by the North Carolina State Building Commission, which process shall not apply to this Project.

17.2 For purposes of this Section the following definitions shall apply:

- a. *Agreement to construct the Project* means an agreement to construct the Project that is subject to the requirements of NCGS 143-128 and does not include any agreement related to the Project that is not subject to said statute.
- b. *Construct or construction* refers to and includes the erection, construction, alteration or repair of the Project.

c. *Party or Parties* refers to the parties listed in Section 16.4.

d. *Project* means the building to be erected, constructed, altered or repaired pursuant to this Agreement.

17.3 The City and any Party contracting with the City or with any first-tier or lower-tier subcontractor for the construction of the Project agree to participate in good faith in any mediation of a dispute subject to this Section and NCGS 143-128(f1-g), including without limitation the following Parties (if any): architect(s), engineer(s), surveyor(s), construction manager, construction manager at risk, prime contractor(s), surety(ies), subcontractor(s), and supplier(s).

17.4 In order to facilitate compliance with NCGS 143-128(f1-g), the Contractor and all other Parties shall include this Section in every agreement to which it (any of them) is a Party for the construction of the Project without variation or exception. Failure to do so will constitute a breach of this Agreement, and the Contractor or other Party failing to include this Section in any agreement required by this Section shall indemnify and hold harmless the remaining Parties from and against any and all claims, including without limitation reasonable attorney fees and other costs of litigation, arising in any manner from such breach. Notwithstanding the foregoing provisions of this Section, it is expressly understood and agreed that the Parties are intended to be and shall be third-party beneficiaries of the provisions of this Section and can enforce the provisions hereof.

17.5 The following disputes are not subject to mediation: (i) a dispute seeking a non-monetary recovery; and (ii) a dispute seeking a monetary recovery of \$15,000 or less.

17.6 A dispute seeking the extension of any time limit set forth in an agreement to construct the Project shall be subject to mediation pursuant to this Section and NCGS 143-128(f1-g), but only if the damages which would be suffered by the Party seeking the extension would exceed \$15,000 if the disputed extension is denied. To the extent that liquidated damages are set forth in such agreement as the measurement of damages for failure by such Party to meet such time limit, such liquidated damages shall be the exclusive standard for determining the amount of damages associated with such dispute.

17.7 For purposes of this Section, a dispute is limited to the recovery of monetary damages from the same transaction or occurrence against a single Party or two or more Parties alleged to be liable jointly, severally or in the alternative. Two or more disputes may not be consolidated or otherwise combined without the consent of all Parties to such disputes.

17.8 In addition to such matters as are required by the Rules, a request for mediation shall include the amount of the monetary relief requested.

17.9 Prior to requesting mediation, a Party must form a good faith belief that it is entitled under applicable law to recover the monetary amount to be included in the request from one or more of the remaining Parties. Such belief must be based on a reasonable and prudent investigation into the dispute that is the subject of the request. The request for mediation must be based on such investigation and may not include any amount or the name of any remaining Party, unless supported by such investigation and good faith belief by the Party requesting the mediation.

17.10 If a Party breaches any provision of Section 17.9, it shall indemnify and hold harmless all other Parties from any costs, including reasonable attorney fees and other costs of litigation, and damages incurred by such other Parties that arise from such breach.

17.11 All expenses incurred by a Party to a dispute in preparing and presenting any claim or defense at the mediation shall be paid by the Party. Such expenses include without limitation preparation and production of witnesses and exhibits and attorney fees. All other expenses of the mediation, including filing fees and required traveling and other expenses of the mediator, shall be borne as follows: one half by the Party requesting the mediation, with the remaining parties paying equal shares of the remaining expenses and costs; provided that, if the City is named as a party to the mediation, the City shall pay at least one-third of the mediation expenses and costs divided among the Parties. If more than one Party to a dispute requests a

mediation, the mediation expenses and costs to be divided among the Parties shall be borne equally by the Parties to the dispute; provided that, if the City is named as a Party to the mediation, the City shall pay at least one-third of the mediation expenses and costs divided among the Parties.

17.12 The mediation shall be held at a location agreeable to the mediator and all of the Parties; provided that, if no agreement can be reached, the mediation will be held at such location in Cabarrus County as the mediator shall determine.

17.13 The provisions of this Section are subject to any other provision of this Agreement concerning the submission, documentation and/or proof of any claim or dispute. Such other provisions shall apply in full force and shall be satisfied as a condition precedent to mediation pursuant to this Section.

17.14 The Parties understand and agree that mediation in accordance with this Section shall be a condition precedent to institution of any legal or equitable proceeding seeking monetary recovery based on any dispute that is subject to mediation pursuant to this Section.

IN WITNESS WHEREOF, the City of Concord and the Contractor have caused this contract to be executed under seal by their respective duly authorized agents or officers.

- Signatures on Next Page -

**CITY OF CONCORD:**

By: \_\_\_\_\_  
City Manager

**ATTEST BY:**

By: \_\_\_\_\_  
City Clerk

**SEAL**

\_\_\_\_\_  
(Typed or printed Legal Name of Contractor)

By: \_\_\_\_\_  
Signature of President/Vice President/Manager/Partner

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

**ATTEST:**

By: \_\_\_\_\_  
Signature of Vice President/Secretary/or other Officer

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

**SEAL**

**APPROVED AS TO FORM**

\_\_\_\_\_  
Attorney for the City of Concord

**APPROVAL BY CITY FINANCE OFFICER**

This instrument has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act.

\_\_\_\_\_  
Signature